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VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-B 204
Washington, DC 20554

Re: ***Ex parte* presentation**
MM Docket No. 01-276

Dear Mr. Caton:

Pursuant to Section 1.1206(b) of the Commission's Rules, this is to provide notice of an *ex parte* meeting concerning the above-referenced proceeding. On April 4, 2002, George L. Miles, Jr. of WQED Pittsburgh, and Steven A. Lerman and Barbara K. Gardner of Leventhal, Senter & Lerman P.L.L.C., met with W. Kenneth Ferree, Chief, Media Bureau; Susan Eid, Legal Advisor to Chairman Powell; Deborah E. Klein, Special Counsel and Chief of Staff, Media Bureau; Barbara Kreisman, Chief, Video Division; and Clay Pendarvis, Chief, Television Branch.

At the meeting, representatives of WQED Pittsburgh discussed the substance of their respective Comments and Reply Comments filed in the proceeding on December 18, 2001 and January 22, 2002, as well as WQED Pittsburgh's Petition to Delete Noncommercial Reservation filed on January 9, 2001. They emphasized the importance to WQED's business plans of early action on the Petition, which seeks the dereservation of station WQEX's frequency in order that the station may be sold commercially and the proceeds applied to strengthen WQED(TV). They expressed their great concern that almost fifteen months had already passed since the Petition was filed.

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Mr. William F. Caton
April 5, 2002
Page -2-

In addition, WQED's representatives detailed the company's continuing financial distress, and the resulting substantial impairment of its ability to continue to provide the level of public television service that Pittsburgh deserves. They also noted that the legal standard for dereservation is not whether it has been approved in the past, but whether a compelling showing has been made in the particular case at issue. WQED's representatives urged that WQED has unquestionably made such a showing in this case.

In response to questions from the staff, WQED indicated that settlement with representatives of its opposition had been explored on several occasions, but that none of these efforts had proven fruitful.

Finally, WQED's representatives also explained that because dereservation would not be in the public interest unless WQED's financial distress were relieved as a direct result of such action, accepting competing applications for the newly dereserved WQEX spectrum and then auctioning it off would defeat that public interest result, since auction proceeds go to the U.S. Treasury.

Copies of the attached written presentation were provided at the conclusion of the meeting.

Pursuant to Section 1.1206(b) of the Rules, an original and one copy of this *ex parte* notice, including the attachment, are being filed with the Secretary.

Respectfully submitted,



Barbara K. Gardner

Attachment

cc with att.:

Susan Eid (by hand)
W. Kenneth Ferree (by hand)
Deborah E. Klein (by hand)
Barbara Kreisman (by hand)
Clay Pendarvis (by hand)

*Amendment of the Television Table of Allotments To Delete
Noncommercial Reservation of Channel *16, 482-488 MHz, Pittsburgh, Pennsylvania
MM Docket No. 01-276*

*

Presented by WQED Pittsburgh, April 4, 2002

- **QED's financial distress is genuine and severe, and can be adequately addressed only by the commercial sale of a dereserved WQEX.**
 - QED remains burdened by \$9 million in debt inherited from prior management. In addition, QED faces digital conversion costs of \$8.6 million to transition WQED and WQEX, plus \$3 million in now unavoidable costs to repair and upgrade its physical plant.
 - QED continues to experience a significant deficit in net unrestricted assets, and in net working capital.
 - QED's financial constraints have forced the company to reduce the size of its workforce by almost one-half, from 188 employees in 1993 to 99 in 2001.
 - Because of its debt, QED has had to postpone or shelve development of numerous programming and community outreach initiatives, including a public affairs discussion series, a program targeting the concerns of area high school students, a local music show, and other programs focusing on local government, business and the dramatic arts.
 - The future of QED's award-winning half-hour weeknight television "magazine" program, "On Q," is in doubt because current funding expires at the end of this year, and new sources of support do not appear available.
 - QED has been forced to put off making badly needed structural improvements to its building, and has also postponed implementing necessary upgrades to its information technology infrastructure.
 - Relieving QED's financial distress requires the sale of WQEX to a commercial buyer. None of the alternative "solutions" offered by QED's opponents – including selling Pittsburgh Magazine, generating revenues in the future from excess digital spectrum, or declaring bankruptcy – makes business sense, will alleviate QED's fiscal constraints, or will advance the public interest.
- **The Pittsburgh economy has weakened and can no longer support two noncommercial television stations.**
 - The latest U.S. Census figures show that Pittsburgh's population continues to decline steadily. Of the top 42 U.S. metropolitan areas, Pittsburgh alone experienced a drop in population over the past decade. Today, the Pittsburgh metro area is the 22nd largest in the U.S., down from the eighth largest in 1950, shortly before the FCC reserved Channel *16.
 - Pittsburgh's dwindling population lacks the wherewithal to help support two noncommercial public television stations in any meaningful way. A University of Pittsburgh study concludes that worker wages in Pittsburgh are falling. The 2000 U.S. Census shows that the Pittsburgh area's median household income and median value of owner-occupied homes lag behind the national median figures. Pittsburgh also boasts significantly fewer higher income households, on a percentage basis, than the nation as a whole. A record number of bankruptcies was filed in western Pennsylvania during 2001.

- Even QED's opponents recognize the lack of wealth in the Pittsburgh area, acknowledging that nearly one in four residents in Allegheny County, which is home to Pittsburgh, is "unable to afford food, housing, health care and other basic needs."
- The citizens of Pittsburgh are also "graying." Allegheny County has the third highest percentage of elderly people in the country.
- In tandem with its dramatic population and wage losses, Pittsburgh has suffered a massive loss of major area corporations. Once the home to the third largest concentration of Fortune 500 headquarters in the nation, Pittsburgh has seen many of these corporations either relocate or go out of business. The shrinking corporate presence in Pittsburgh has directly led to a significant drop in corporate contributions to QED.
- As a community licensee, QED depends heavily on local individual and corporate funding. Thus, unlike the noncommercial television licensees in many markets cited by its opponents, QED cannot rely on primary support from state governments or universities.
- **The wealth of readily available alternative sources for educational programming means that Pittsburgh no longer needs two noncommercial television stations.**
 - Channel *16, formerly a commercial frequency, was reserved almost a half-century ago *at QED's own request* to enlarge the classroom and home instruction service then offered on Channel *13. Granting the requested relief would simply restore Channel *16 to its original non-reserved status.
 - Today, a second noncommercial station is no longer needed in Pittsburgh because a wide range of educational and cultural programming is universally available on cable, DBS, the Internet, videotapes, and, soon, through DTV multicasting. Seventy-nine percent of Pittsburgh-area children use computers in the classroom; cable penetration in the market is 82 percent.
- **The list of reserved channels in the Table of Allotments has already been reduced.**
 - The Commission has previously eliminated reserved channels where doing so would serve the public interest, as in the recent elimination of *hundreds* of vacant noncommercial NTSC reserved allotments in connection with the transition to digital television.
 - The Commission, as it has in other contexts, should recognize that its rules and policies governing noncommercial service must be flexible to adapt to technological and marketplace changes.
- **QED's opponents – Citizens for Independent Public Broadcasting, created by Jerold Starr, an ex-member of QED's Community Advisory Board, and Alliance for Progressive Action – advance several baseless and misdirected arguments.**
 - QED's opponents attack current QED management for mistakes of prior management a decade ago, ignoring the fact that QED today is headed by seasoned public television professionals with outstanding records of public service. They also accuse QED management of seeking a "windfall" and putting its private interests ahead of the public interest – an offensive and totally false claim. All monetary benefits of the proposed dereservation/sale will redound to the benefit of the public.
 - QED's opponents claim broad community support, but in reality the opposition is principally a one-person vendetta by a disgruntled ex-QED Community Advisory Board member who has

attacked PBS and the entire structure of public broadcasting. QED's opponents have used the Internet to orchestrate what appears to be public support for their position, but they conspicuously fail to identify *even one* Pittsburgh area college or university, theater, museum or other cultural or civic institution that supports their efforts.

- QED's opponents incorrectly assert that WQEX's local and unique programming has been lost; in fact, the best of that programming now airs on WQED. The record also reflects that QED produces "a lot of quality with a little," winning more regional Emmys for local programming than *any other* Pittsburgh broadcaster, despite its fiscal constraints.
- **Granting QED's request will not be a precedent for other dereservation initiatives.**
 - QED's fiscal constraints, Congress' explicit recognition of QED's situation, unfortunate FCC delays in acting on past efforts to sell WQEX despite explicit promises of expedited action, and Pittsburgh's continuous economic decline combine to make QED's situation unique, realistically eliminating any risk that its case will serve as precedent for any future dereservation initiative.
 - Fears that the sale of WQEX will lead to a flood of dereservation requests are totally unfounded given the handful of community licensee reserved-channel duopolies that exist.
- **The Commission should dereserve WQEX's frequency without opening the channel up to competing applications or conducting an auction.**
 - Commission precedent has effectively overturned any historical "uncodified rule" purportedly requiring that a newly dereserved channel be made available to competing applications. If there ever was such a "rule," it has been reversed by subsequent FCC actions.
 - In any case, the statutory requirement to auction broadcast spectrum applies only to mutually exclusive applications for *initial* licenses or permits.
 - The dereservation of Channel *16 would of necessity be based on a finding that doing so, and thereby facilitating an arm's length sale of the channel, would alleviate QED's financial distress, strengthen QED, and thereby benefit the public. Thus, opening the dereserved channel to competing applications as QED's opponents request is inherently illogical, because the resulting auction proceeds would go not to QED as will the proceeds of a sale, but to the U.S. Treasury.
 - QED would have no choice but to withdraw its dereservation petition if the WQEX frequency is opened to competing applications.
- **The expedited dereservation of WQEX's frequency and the sale of the station to a commercial buyer are urgently called for and will serve the public interest in many ways.**
 - Proceeds from the sale will retire QED's debt, establish a permanent local programming endowment, complete the mandated transition to digital technology, and pay for overdue repairs to the QED physical plant. The sale of WQEX will also introduce a female-owned independent broadcast voice, ShootingStar, to a market underserved by commercial broadcast stations.
 - It is respectfully requested that QED's request should be given expedited treatment by the Commission, because QED has already endured years of processing delays. Any further delay will jeopardize both QED's and ShootingStar's ability to plan for and effectuate the purchase and sale of WQEX.